



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2014-0251, FRL-9910-63-Region 2]

**Rescission of Determination of Attainment and Call for Attainment Plans for New York, New Jersey and Connecticut for the 1997 8-hour Ozone National Ambient Air Quality Standard for the NY-NJ-CT 1997 Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to rescind its previously issued determination of attainment (Clean Data Determination) for the 1997 8-hour ozone standard for the New York-N. New Jersey-Long Island, (NY-NJ-CT) ozone nonattainment area because recent complete, quality-assured monitoring data show that the area has subsequently violated the 1997 8-hour ozone national ambient air quality standard (NAAQS). In addition, EPA is proposing to call for revisions to the State Implementation Plans (SIPs) for the States of New York, New Jersey and Connecticut. If finalized, this SIP call will require each of these States to submit a revised attainment SIP for the 1997 8-hour ozone NAAQS for its portion of the NY-NJ-CT moderate nonattainment area within 18 months of final action on this SIP call.

**DATES:** Comments must be received on or before [Insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2014-0251, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [Ruvo.Richard@epa.gov](mailto:Ruvo.Richard@epa.gov)
- Fax: (212) 637-3901
- Mail: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- Hand Delivery: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.  
Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 am to 4:30 pm, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2014-0251. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the FOR FURTHER INFORMATION CONTACT section to view the hard copy of

the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning EPA's proposed action related to New Jersey or New York, please contact Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25<sup>th</sup> floor, New York, NY 10008-1866, telephone number (212) 637-3381, email-wieber.kirk@epa.gov.

If you have questions concerning EPA's proposed action related to Connecticut, please contact Richard Burkhart, Air Quality Planning Unit, Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square-Suite 100, Mail Code OEP05-02, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918- 0664, email-burkhart.richard@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

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#### **I. What actions is the EPA proposing?**

The EPA is proposing to determine, based on complete, quality-assured monitoring data, that the air quality in the New York-N. New Jersey-Long Island, NY-NJ-CT 1997 8-hour ozone nonattainment area (hereafter, the NY-NJ-CT area) is no longer attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard). Pursuant to the provisions of 40 CFR 51.918, EPA is therefore proposing to rescind the clean data determination (CDD) for this area which was published in the Federal Register on June 18, 2012 (77 FR 36163).

EPA notes that it has previously determined that the NY-NJ-CT area attained the 1997 8-hour ozone standard by its applicable attainment date, June 15, 2010.<sup>1</sup> However, because EPA is proposing to determine that the area is no longer attaining the 1997 standard, EPA is proposing a State Implementation Plan (SIP) call pursuant to Clean Air Act (CAA) section 110(k)(5), to require the States of New York, New Jersey and Connecticut to submit a SIP demonstrating how the area will re-attain the 1997 8-hour ozone NAAQS as expeditiously as practicable. EPA is proposing to issue this SIP call based on its proposed determination that certified data for 2010-2012, as well as data in EPA's air quality data repository, the Air Quality System (AQS) for the most recent three-year period, 2011-2013, show that the area is currently no longer attaining the 1997 ozone standard. The EPA is proposing that the required SIPs will be due 18 months after the effective date of the final rule.

## **II. Background**

On July 18, 1997 (62 FR 38856), the EPA promulgated a new, more protective standard for ozone based on 8-hour average concentrations (the "1997 8-hour ozone NAAQS"). The EPA designated and classified most areas of the country under the 8-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). The NY-NJ-CT 1997 8-hour ozone nonattainment area was designated nonattainment and classified as moderate with an attainment deadline of June 15, 2010. The NY-NJ-CT area includes Fairfield, New Haven, and Middlesex Counties in Connecticut; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex,

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<sup>1</sup> EPA wishes to make clear that this proposed rulemaking would in no way alter or affect the determination contained in its June 18, 2012 notice (77 FR 36163), pursuant to CAA section 181(b)(2), that the NY-NJ-CT area attained the 1997 8-hour ozone standard by its applicable attainment date of June, 2010. Such a determination remains undisturbed by EPA's evaluation of subsequent air quality.

Union, and Warren Counties in New Jersey; and Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties in New York.

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled “Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 1,” referred to as the Phase 1 Rule.

On November 29, 2005, EPA issued a final rule (70 FR 71612) entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline,” referred to as the Phase 2 Rule. The Phase 2 Rule incorporated the Clean Data Policy in 40 CFR 51.918. Upon EPA’s final determination that an area has attained the 1997 ozone NAAQS, the regulation operates to suspend the obligation to submit attainment-related planning SIP requirements for that standard. Affected SIP requirements include attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS. 40 CFR 51.918 established that these SIP requirements are suspended until such time as the area is redesignated to attainment, at which time the requirements no longer apply; or until EPA determines that the area has violated the 1997 8-hour ozone NAAQS.

On June 18, 2012 (77 FR 36163), the EPA issued a CDD for the NY-NJ-CT area,<sup>2</sup> based on complete, quality-assured and certified ozone monitoring data for 2008–2010. Quality assured

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<sup>2</sup> 77 FR 36163, June 18, 2012, “Determinations of Failure To Attain the One-Hour Ozone Standard by 2007, Current Attainment of the One-Hour Ozone Standard, and Attainment of the 1997 Eight-Hour Ozone Standards for the New York-Northern New Jersey-Long Island Nonattainment Area in Connecticut, New Jersey and New York.”

data available in the AQS for 2011 indicated that the area continued to attain the 1997 8-hour ozone NAAQS. Pursuant to the Clean Data Policy established by 40 CFR 51.918 of the Phase 2 Rule for the 1997 8-hour ozone NAAQS, the requirements for the states to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other SIP revisions related to attainment of the standard were suspended.

Although, pursuant to 40 CFR 51.918, EPA's CDD suspended any outstanding obligations to submit attainment planning SIPs, the States of New York, New Jersey and Connecticut had already submitted to EPA their attainment demonstrations, RACM, RFP plans, and contingency measures for the 1997 8-hour ozone standard for the NY-NJ-CT area. EPA approved the RFP plan, RACM plan and contingency measures for New Jersey on May 15, 2009 (74 FR 22837) and reasonably available control technology (RACT) plan for New Jersey on December 22, 2010 (75 FR 80340). EPA approved the RFP plan and contingency measures for New York on August 18, 2011 (76 FR 51264) and the RACM plan (including RACT) for New York on July 23, 2010 (75 FR 43066). EPA approved the RFP plan for Connecticut on August 22, 2012 (77 FR 50595). EPA also approved the New York and New Jersey 1997 8-hour ozone attainment demonstration plans on February 11, 2013 (78 FR 9596). EPA proposed, but has not finalized, approval of the Connecticut ozone attainment plan for the NY-NJ-CT area. See 78 FR 27161; May 9, 2013.

As noted above, separately and in addition to its CDD for the NY-NJ-CT area, pursuant to section 181(b)(2), EPA determined that the area attained the 1997 8-hour ozone standard by its applicable attainment deadline, June 15, 2010. This determination that the area attained by the

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applicable deadline was based on complete, quality-assured and certified ozone monitoring data for 2007–2009.

### III. Current Monitoring Data

Complete, quality-assured and certified ozone monitoring data for 2010–2012, and data available in the AQS for 2013, indicate that the NY-NJ-CT area no longer attains the 1997 8-hour ozone NAAQS. EPA has reviewed the 2012 ozone design values, consisting of 2010-2012 data, and 2013 ozone design values, based on 2011-2013 ambient air quality data in AQS (in accordance with 40 CFR 50.9, 40 CFR part 50 appendix I, and EPA policy and guidance, as well as data processing, data rounding and data completeness requirements) for the NY-NJ-CT area, and is proposing to determine that the area is no longer in attainment of the 1997 8-hour ozone NAAQS. Note that for purposes of the 1997 8-hour ozone NAAQS, ozone design values are calculated based on the 3-year average of the annual 4<sup>th</sup> maximum 8-hour ozone concentration. An area is considered in nonattainment when the 3-year design value is equal to or greater than 0.085 parts per million (ppm). For the 2010-2012 period, the 8-hour ozone design value for the NY-NJ-CT area was 0.087 ppm. Data in AQS for the 2011-2013 period further indicate continued nonattainment. Table 1 below shows the 2010-2012 design values, as well as the 2011-2013 design values, for all of the ozone monitors in the NY-NJ-CT area.

**Table 1: Design Values for Ozone Monitors in the NY-NJ-CT area**

State	Site Location	Monitor ID	2010 – 2012 Design Value (ppm)	2011 – 2013* Design Value (ppm)
Connecticut	Danbury	090011123	0.083	0.081
Connecticut	Greenwich	090010017	0.082	0.083

Connecticut	Madison	090093002	0.087	0.089
Connecticut	Middletown	090070007	0.080	0.081
Connecticut	New Haven	090099005	0.076	0.078
Connecticut	Stratford	090013007	0.085	0.089
Connecticut	Westport	090019003	0.085	0.087
New Jersey	Bayonne	340170006	0.078	0.070
New Jersey	Chester	340273001	0.078	0.076
New Jersey	Flemington	340190001	0.080	0.077
New Jersey	Leonia	340030006	0.078	0.077
New Jersey	Monmouth University	340250005	0.083	0.078
New Jersey	Newark	340130003	0.082	0.077
New Jersey	Ramapo	340315001	0.075	0.072
New Jersey	Rutgers University	340230011	0.085	0.079
New York	Babylon	361030002	0.085	0.081
New York	CCNY	360610135	0.076	0.072
New York	Pfizer Lab (Bronx)	360050133	0.076	0.073
New York	Holtsville	361030009	0.080	0.078
New York	Queens College	360810124	0.080	0.079
New York	Riverhead	361030004	0.079	0.080
New York	Susan Wagner	360850067	0.083	0.078
New York	White Plains	361192004	0.076	0.075

\*2013 Data not yet certified and is subject to change

#### **IV. Why is EPA proposing SIP Calls to the States in the NY-NJ-CT Area?**

Although EPA recognizes that the NY-NJ-CT area previously attained the 1997 8-hour ozone

NAAQS by its original attainment date, EPA's review of subsequent data has indicated that the

area no longer continues to attain the 1997 8-hour ozone standard. Section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to attain or maintain a NAAQS, and to require (“call for”) the state to submit, within a specified period, a SIP revision to correct the inadequacy. This CAA requirement for a SIP revision is known as a “SIP call.” The CAA authorizes EPA to allow a state up to 18 months to respond to a SIP call. In the circumstances presented here, and in conjunction with EPA’s proposal to rescind its determination that the NY-NJ-CT area is attaining the NAAQS, EPA is proposing under section 110(k)(5) to find the SIPs substantially inadequate with respect to attainment of the 1997 8-hour ozone NAAQS. EPA therefore proposes to issue SIP calls requiring the States of New York, New Jersey and Connecticut to develop SIP revisions demonstrating how the NY-NJ-CT area will re-attain the 1997 8-hour ozone standard.

#### **V. How should the States respond to a final SIP Call?**

As noted above, EPA has previously approved attainment demonstrations for New York and New Jersey and proposed approval of Connecticut’s attainment demonstration for the NY-NJ-CT area. These approvals and proposed approval were based on the fact that the plans showed that the NY-NJ-CT area would attain by the area’s June 15, 2010 attainment date. Moreover, as stated previously, EPA, after notice-and comment rulemaking, determined the area did attain by that date (77 FR 36163). However, based on the monitoring data discussed above for the NY-NJ-CT area, EPA is proposing to determine the area has since violated the 1997 8-hour ozone standard. Therefore, EPA is proposing that the States submit updated plans showing how the area will re-attain the standard. EPA is proposing that the States have two different ways of responding to the SIP call.

First, EPA proposes that the States respond to the SIP call by submitting revisions to their respective SIPs showing how the States will re-attain the 1997 8-hour ozone standard.

EPA is also proposing, as an alternative response to the SIP call, that the States develop and submit attainment plans demonstrating attainment of the current 2008 8-hour ozone standard.<sup>3</sup> Currently, the NY-NJ-CT area is designated nonattainment and classified as “marginal” for the 2008 8-hour ozone standard. An attainment plan is not required for areas classified as “marginal,” but these areas must still attain the ozone standard. Thus, under this option, New York, New Jersey and Connecticut may either: 1) request that the entire NY-NJ-CT area be reclassified to “moderate” for the 2008 8-hour ozone standard<sup>4</sup> and prepare the required SIP elements pursuant to a “moderate” classification and attain as expeditiously as practicable, but, no later than 2018; or, 2) voluntarily prepare an attainment SIP for the NY-NJ-CT area for the 2008 8-hour ozone standard, which demonstrates attainment by the current “marginal” classification attainment date, i.e., 2015. EPA is proposing that this alternative response of submitting an attainment plan for the 2008 ozone standard would also satisfy EPA’s SIP call on the 1997 8-hour ozone standard being proposed in this action since it would be demonstrating compliance with a more stringent NAAQS.

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<sup>3</sup> On March 12, 2008 (73 FR 16436), the EPA revised the primary NAAQS for ozone, designed to protect public health, to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years). In rules finalized on April 30, 2012 (77 FR 30088), and May 21, 2012 (77 FR 34421), the EPA formally designated all areas of the country as attainment/unclassifiable, nonattainment or unclassifiable for the 2008 8-hour ozone NAAQS. In addition, on June 6, 2013 (78 FR 34178), EPA proposed a rule for implementing the 2008 8-hour ozone NAAQS which also included a proposal to revoke the 1997 8-hour ozone standard.

<sup>4</sup> All three states (New York, New Jersey and Connecticut) of the NY-NJ-CT area must request the reclassification since it is a multi-state nonattainment area.

In order to provide a reasonable time for the states to develop and submit either of these two SIP revisions, EPA is proposing to provide the States of New York, New Jersey and Connecticut a period of 18 months from the effective date of a final SIP call to develop and submit to EPA the relevant SIPs for the 1997 or 2008 ozone NAAQS. This 18 months is the maximum period allowed pursuant to CAA section 110(k)(5) and EPA believes it is reasonable time for New York, New Jersey and Connecticut to develop and submit the relevant SIPs to EPA.

EPA is proposing that the effective date for a final SIP call and rescission of the CDD will be 30 days after publication of the final rule in the Federal Register.

**VI. What happens if any of the States (New York, New Jersey and Connecticut) do not submit a SIP responding to the SIP Calls?**

Section 179(a) sets forth four findings that form the basis for application of sanctions. The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding that may be relevant to this rulemaking, should the States of New York, New Jersey and Connecticut fail to submit the required plan (i.e., a SIP revision showing how the state will re-attain the 1997 ozone standard, or under the alternative response discussed above, a SIP revision demonstrating attainment of the 2008 ozone standard) in response to this SIP call. If any of the States fail to submit the required plan, EPA will issue a finding under section 179(a) of the CAA that the State or States failed to make a required SIP submittal. If within 18 months of the finding, the State or States of New York, New Jersey and Connecticut have not submitted an attainment SIP that EPA determines is complete, then the emission offset sanction will apply automatically pursuant to CAA section 179(a) and 40 CFR 52.31. Under this sanction, the ratio of emission reductions that must be obtained to offset increased emissions caused by new major sources or modifications to major sources in the NY-

NJ-CT area must be at least two to one. If the State or States of New York, New Jersey and Connecticut do not make a complete submission within six months after the offset sanction applies, then the highway funding sanction will apply, in accordance with 40 CFR 52.31. In addition, sanctions would apply in the same manner if the State or States of New York, New Jersey and Connecticut submit a plan that EPA determines is incomplete or that EPA disapproves. Finally, CAA section 110(c) provides that EPA promulgate a FIP no later than 24 months after a finding of failure to submit a SIP under section 179(a) unless the State or States of New York, New Jersey and Connecticut have submitted and EPA has approved the respective attainment plan.

EPA is soliciting public comments on the issues discussed in this action. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the ADDRESSES section of this [Federal Register](#).

Note that if EPA receives adverse comment on a portion of this action and if that portion can be severed from the remainder of the action, EPA may adopt as final those provisions that are not the subject of an adverse comment. In addition, EPA may take final action on one or more of these actions separately, depending on the circumstances involved with each State's portion of the area.

## **VII. Statutory and Executive Order Reviews**

This action proposes a determination, i.e., that the NY-NJ-CT area is no longer attaining the 1997 ozone NAAQS, based on EPA's review of air quality data provided by Connecticut, New York and

New Jersey. This action also proposes a SIP call for the States of Connecticut, New York, and New Jersey. In proposing this SIP call, EPA is acting under Section 110(k)(5) of the CAA, which requires the Agency to require a state to correct a deficiency that EPA has found in the State Implementation Plan of the state. Accordingly, this action does not impose additional requirements beyond those required by the CAA itself. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the States, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 23, 2014.

Curt Spalding,  
Regional Administrator,  
Region 1.

Dated: April 7, 2014.

Judith A. Enck,  
Regional Administrator,  
Region 2.

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